

11740-PAJ

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**GREAT AMERICAN INSURANCE
COMPANY OF NEW YORK,**

Plaintiff,

v.

**ADVANCE OCEAN INC., NIPPON YUSEN
KAISHA, NYK (NORTH AMERICA) INC.,
BURLINGTON NORTHERN SANTA FE
CORPORATION, BNSF RAILWAY
COMPANY, THE BURLINGTON
NORTHERN AND SANTA FE RAILWAY
COMPANY,**

Defendants.

x : **07 CIV 6421 (PAC) (THK)**
: **ANSWER TO AMENDED
COMPLAINT WITH
CROSS-CLAIMS**
: **ANSWERING DEFENDANT**
: **DEMANDS TRIAL BY JURY**
: **x**

Defendant, **ADVANCE OCEAN INC.**, by its attorneys, **JUNGE & MELE, LLP**, as its Answer to the Amended Complaint of Plaintiff, **GREAT AMERICAN INSURANCE COMPANY OF NEW YORK**, and Cross-Claiming against Defendants, **NIPPON YUSEN KAISHA, NYK (NORTH AMERICA) INC., BURLINGTON NORTHERN SANTA FE CORPORATION, BNSF RAILWAY COMPANY, THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, alleges as follows:

FIRST: Answering Defendant denies knowledge and information sufficient to form a belief as to the matters set forth in paragraphs “1,” “3” and “4” of the Amended Complaint.

SECOND: Answering Defendant denies the allegations contained in paragraphs "2" and "5" of the Amended Complaint.

**AS AND FOR ITS AFFIRMATIVE DEFENSES
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

FIRST AFFIRMATIVE DEFENSE

The Court lacks personal jurisdiction over Answering Defendant and/or this action is subject to arbitration pursuant to the governing charter party or documents of carriage.

SECOND AFFIRMATIVE DEFENSE

The Amended Complaint fails to state a cause of action or fails to state claims upon which relief can be granted as against Answering Defendant.

THIRD AFFIRMATIVE DEFENSE

Some or all of the claims alleged in the Amended Complaint are due to the active fault, neglect, negligence, and breach of express or implied contract by co-Defendants or other third parties.

FOURTH AFFIRMATIVE DEFENSE

If carriage of Plaintiff's cargo was effected pursuant to any statutory enactment, Answering Defendant is without responsibility, or its liability is limited by the package or weight limitation, or other limitations, for the loss or damage alleged by Plaintiff in its Amended Complaint.

FIFTH AFFIRMATIVE DEFENSE

Answering Defendant was merely a freight forwarder and did not receive, transport or carry Plaintiff's cargo, and as such, is without any liability to any of the parties herein.

SIXTH AFFIRMATIVE DEFENSE

Any loss or damage to Plaintiff's cargo was due to inherent vice, and/or acts of the shipper, owner of the cargo or third parties, for which Answering Defendant may not be held responsible.

SEVENTH AFFIRMATIVE DEFENSE

If Plaintiff sustained any losses as alleged in the Amended Complaint, said losses arose out of and were caused by risks, dangers and hazards, all of which were open, obvious and assumed by shipper, Plaintiff or owners of the cargo.

EIGHTH AFFIRMATIVE DEFENSE

If Plaintiff sustained any loss or damages, as alleged in the Amended Complaint, said damages were caused solely by its own or shipper's negligence, or that of their agents, servants or employees, and were not caused or contributed to in any manner by the alleged negligence, breach of express contracts or breach of warranty of Answering Defendant.

NINTH AFFIRMATIVE DEFENSE

Plaintiff failed to take all reasonable steps to minimize its damages.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's damages are limited pursuant to the terms and conditions of any contracts of carriage entered into with respect to the subject cargo.

ELEVENTH AFFIRMATIVE DEFENSE

Answering Defendant is or was an agent for a fully disclosed principal.

CROSS-CLAIMS AGAINST CO-DEFENDANTS

NIPPON YUSEN KAISHA, NYK (NORTH AMERICA) INC., BURLINGTON NORTHERN SANTA FE CORPORATION, BNSF RAILWAY COMPANY, THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

FIRST: If Answering Defendant is found liable to Plaintiff in this action by way of verdict, judgment or settlement, such liability, if any, in whole or in part, would be due to the active and primary fault, neglect and negligence and/or breach of express and implied contract on the part of **NIPPON YUSEN KAISHA, NYK (NORTH AMERICA) INC., BURLINGTON NORTHERN SANTA FE CORPORATION, BNSF RAILWAY COMPANY, THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, one of them, some of them, or all of them, without any fault, neglect, negligence and/or breach of express or implied contract by Answering Defendant contributing thereto.

SECOND: By reason of the foregoing, Answering Defendant demands indemnification and/or contribution from said co-Defendants, **NIPPON YUSEN KAISHA, NYK (NORTH AMERICA) INC., BURLINGTON NORTHERN SANTA FE CORPORATION, BNSF RAILWAY COMPANY, THE BURLINGTON**

NORTHERN AND SANTA FE RAILWAY COMPANY, one of them, some of them, or all of them, for any such verdict, judgment or settlement which may be rendered against it, including reasonable counsel fees necessary to defend this action.

WHEREFORE, Answering Defendant demands that the Amended Complaint herein be dismissed with costs and disbursements to Answering Defendant as against the Plaintiff, and in the alternative, that Answering Defendant have judgment on its Cross-Claims against co-Defendants, one of them, some of them, or all of them, including reasonable counsel fees necessary to defend this action, together with costs and disbursements, and that the Court grant such other, further and different relief as the justice of the cause may require.

Dated in the City of New York on January 2, 2008

Respectfully submitted,

JUNGE & MELE, LLP
Attorneys for Defendant
Advance Ocean Inc.

/s/ Peter A. Junge
By _____
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